

Message Text

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INFO OCT-01 NEA-10 ISO-00 EB-07 L-03 TRSE-00 OPIC-03 AID-05

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STATE/L/NEA:JAROHWER

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R 032034Z FEB 76

FM SECSTATE WASHDC

TO AMEMBASSY ALGIERS

C O N F I D E N T I A L STATE 026268

E.O. 11652: GDS

TAGS:ETRD, AG

SUBJECT:POSSIBLE BOYCOTT CLAUSES IN ALGERIAN TENDER
DOCUMENT

REF: A) ALGIERS 3789 B) ALGIERS 3442

SUMMARY:RECENTLY RECEIVED TENDER DOCUMENTS (ANNOUNCED
REF A) FOR MINISTRY OF PUBLIC WORKS HASSI-AMEUR RAILWAY
PROJECT CONTAIN REQUESTS FOR INFORMATION FROM BIDDERS ON
NATIONALITY AND BIRTH PLACE OF COMPANY OFFICERS. IF THESE
REQUESTS ARE DETERMINED TO BE BOYCOTT-RELATED, THEN UNDER
SECRETARIAL CIRCULAR NO. 21 EFFECTIVE DEC. 1, 1975, USDOC
CANNOT DISSEMINATE DOCUMENTS. IF THESE REQUESTS ARE DETER-
MINED TO BE BOYCOTT-RELATED AND DISCRIMINATORY, THEN UNDER
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EXPORT ADMINISTRATION REGULATIONS AS REVISED DECEMBER 1,

1975, U.S. FIRMS WOULD ALSO BE PROHIBITED FROM RESPONDING.
END SUMMARY.

1. AS PART OF INFORMATION REQUESTED FROM BIDDERS, GOA DOCUMENTS CONTAIN REQUEST THAT BIDDERS SUBMIT "DECLARATION TO BE ENDORSED BY FIRMS BIDDING ON STATE CONTRACTS." THIS "DECLARATION" SEEMS TO BE A COMMON ELEMENT OF MANY, BUT NOT ALL, GOA TENDER DOCUMENTS ALTHOUGH THE FORMAT AND SPECIFIC QUESTIONS VARY WIDELY ACCORDING TO THE ISSUING

MINISTRY OR AGENCY. IN THIS INSTANCE, THE FOLLOWING REQUESTS REQUIRE CLARIFICATION: (A) ON UNNUMBERED SEVENTH PAGE OF DOCUMENTS, ITEM FOUR STATES QUOTE, FOR CONTRACTS ISSUED FOR NATIONAL DEFENSE NEEDS AND FOR CONTRACTS IN WHICH THE INTERESTED MINISTER JUDGES IT NECESSARY FOR NATIONAL INTEREST, INFORMATION MUST BE FURNISHED ON NATIONALITY OF FIRM AND ITS OFFICERS, END QUOTE (AS TRANSLATED). (B) ITEM EIGHT ON SAME PAGE REQUESTS QUOTE, NAMES, NATIONALITY, DATE AND PLACE OF BIRTH OF STATUTORY OFFICERS (RESPONSABLES STATUTAIRES) OF THE FIRM AND OF OTHER PERSONS AUTHORIZED TO NEGOTIATE FOR THE FIRM (PERSONNES AYANT QUALITE POUR ENGAGER L'ENTREPRISE AL'OCCASION DU MARCHE). END QUOTE (AS TRANSLATED)

2. PERTINENT POLICIES ARE: (A) WITH RESPECT TO THE DEPARTMENT OF COMMERCE, SECRETARIAL CIRCULAR NO. 21 STATED THAT EFFECTIVE DECEMBER 1, 1975, USDOC QUOTE WILL NOT DISSEMINATE OR MAKE AVAILABLE FOR INSPECTION ANY DOCUMENTS OR ANY INFORMATION ON TRADE OPPORTUNITIES OBTAINED FROM DOCUMENTS OR OTHER MATERIALS WHICH ARE KNOWN TO CONTAIN BOYCOTT CONDITIONS THAT SEEK TO IMPOSE OR FOSTER A RESTRICTIVE TRADE PRACTICE OR BOYCOTT AGAINST ANOTHER COUNTRY FRIENDLY TO THE UNITED STATES END QUOTE. (B) SECTION 369.2 OF DECEMBER 1, 1975 REVISIONS TO EXPORT ADMINISTRATION REGULATIONS PROHIBITS EXPORTERS AND RELATED SERVICE ORGANIZATIONS QUOTE FROM TAKING ANY ACTION, INCLUDING THE FURNISHING OF INFORMATION OR THE SIGNING OF AGREEMENTS, THAT HAS THE EFFECT OF FURTHERING OR SUPPORTING A RESTRICTIVE TRADE PRACTICE FOSTERED OR IMPOSED BY FOREIGN COUNTRIES AGAINST OTHER COUNTRIES FRIENDLY TO THE CONFIDENTIAL

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U.S., WHICH PRACTICE DISCRIMINATES OR HAS THE EFFECT OF DISCRIMINATING AGAINST U.S. CITIZENS OR FIRMS ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN END QUOTE. EXAMPLES OF PROHIBITED REQUESTS INCLUDE INQUIRIES AS TO PLACE OF BIRTH OR NATIONALITY OF PARENTS OF EMPLOYEES, STOCKHOLDERS OR DIRECTORS, OR INQUIRIES AS TO WHETHER THEY ARE JEWISH, FEMALE, ETC. (C) SECTION 369.3 OF REVISED REGULATIONS ENCOURAGES AND REQUESTS EXPORTERS

AND RELATED SERVICE ORGANIZATIONS QUOTE TO REFUSE TO TAKE ANY ACTION, INCLUDING THE FURNISHING OF INFORMATION OR THE SIGNING OF AGREEMENTS, THAT HAS THE EFFECT OF FURTHERING OR SUPPORTING OTHER RESTRICTIVE TRADE PRACTICES OR BOYCOTTS FOSTERED OR IMPOSED BY FOREIGN COUNTRIES UNQUOTE AGAINST COUNTRIES FRIENDLY TO THE UNITED STATES. EXAMPLES INCLUDE REQUIREMENTS FOR CERTIFICATION THAT OFFICERS OR STOCKHOLDERS ARE NOT NATIONALS OF A BOYCOTTED COUNTRY (AS OPPOSED TO NATIONAL ORIGIN OR ETHNIC BACKGROUND), CERTIFICATION THAT ORIGIN OF GOODS NOT FROM BOYCOTTED COUNTRY, AND OTHER REQUESTS TO IMPLEMENT ECONOMIC

SANCTIONS AGAINST BOYCOTTED COUNTRY.

3. WE NOTE, AS REPORTED REF. B, THAT GOA HAS NO BOYCOTT OFFICE, NO PUBLISHED BOYCOTT REGULATIONS, AND THAT U.S. FIRMS APPARENTLY HAVE NOT HAD BOYCOTT-RELATED PROBLEMS IN ALGERIA. HOWEVER, CLARIFICATION NEEDED AS TO FOLLOWING: (A) DOES GOA BY LAW, POLICY OR PRACTICE IMPOSE A BOYCOTT OR RESTRICTIVE TRADE PRACTICES ON ECONOMIC RELATIONS WITH OTHER COUNTRIES FRIENDLY TO THE UNITED STATES? IF SO, WHICH COUNTRIES? (B) DOES GOA BY LAW, POLICY OR PRACTICE SEEK TO IMPOSE A SECONDARY BOYCOTT OR RESTRICTIVE TRADE PRACTICES AGAINST THIRD COUNTRY (INCLUDING U.S.) FIRMS WHICH HAVE CERTAIN BUSINESS DEALINGS WITH THE COUNTRIES IDENTIFIED IN A, ABOVE? (C) WHAT IS THE PURPOSE OF GOA IN MAKING SUBJECT REQUESTS? SHOULD THEY BE CONSIDERED BOYCOTT-RELATED? ARE REQUESTS INTENDED TO DISCRIMINATE AGAINST U.S. CITIZENS ON THE BASIS "RELIGION, RACE, COLOR, NATIONAL ORIGIN OR SEX"? INGERSOLL

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